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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CRYSTAL LEI et al., Plaintiffs and Appellants, v. DEMAS YAN et al., Defendants and Respondents.	A158641 (City & County of San Francisco Super. Ct. No. CGC-14-565831)

Plaintiffs Crystal Lei and Bryant Fu obtained a judgment against defendant Demas Yan on their first cause of action for malicious prosecution. On their second cause of action under the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq.)[1] (UVTA), judgment was entered in favor of Yan's codefendants Tina Yan, Cheuk Tin Yan, and 547 Investments, LLC (547 Investments) (collectively the codefendants). On appeal, plaintiffs contend the trial court erred when it: (1) rejected their amended objections to the tentative statement of decision as untimely; (2) denied their post-trial motions on the grounds of lack of jurisdiction; (3) refused to apply collateral estoppel against the codefendants on the UVTA claim; and (4) denied plaintiffs' request for punitive damages. We conclude that collateral estoppel

[1] Further statutory references are to the Civil Code unless stated otherwise.

applied on the UVTA claim. Accordingly, we reverse the judgment in favor of the codefendants and remand for further proceedings. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Yan was a former business partner of Lei's ex-husband and Fu's father, Tony Fu. In 2000, Yan purchased a residence on Chenery Street in San Francisco (the Chenery property) and entered into a joint venture agreement with Tony Fu to convert the Chenery property into condominium units. Tony Fu later assigned his rights under the joint venture agreement to Wei Suen. In 2002, Yan executed a promissory note in favor of Stella Chen, secured by a deed of trust against the Chenery property.

A. Bankruptcy-Related Proceedings

In 2004, Yan filed an action against Tony Fu, Suen, and Chen seeking to prevent Chen from foreclosing on the Chenery property. After the trial court declined to stop the foreclosure, Yan filed for bankruptcy. The bankruptcy court determined the parties' respective rights regarding the Chenery property and found that Yan had no enforceable claims against Tony Fu, Suen, or Chen. Yan's appeal of that determination was dismissed. The bankruptcy trustee and Chen then entered into a settlement agreement that included a section 1542 waiver of all known or unknown claims. In June 2007, the court entered an order granting Yan a discharge.

In 2007 and 2008, Yan filed several unauthorized actions against Tony Fu and Lei asserting claims regarding the Chenery property that were barred by the preclusive effect of the bankruptcy court judgment. These actions were all dismissed.

In May 2008, the bankruptcy court approved settlements between the bankruptcy trustee and Lei and Suen which included mutual releases of all

claims. By June 2008, the trustee had released all of the estate's prepetition claims against Lei, Suen, and Chen. After approving the trustee's final accounting, the bankruptcy court entered an order abandoning to Yan the bankruptcy estate's interest and all remaining prepetition causes of action that were not otherwise adjudicated or settled and released by the bankruptcy trustee.[2]

In July 2010, Tony Fu sued Yan for defamation. Yan filed a cross-complaint against Tony Fu, Chen, Suen, and plaintiffs (hereafter the 2010 cross-complaint). The case was removed to the bankruptcy court, which dismissed Yan's cross-complaint on the ground it asserted prepetition claims that had already been settled and released by the bankruptcy trustee. The bankruptcy court also vacated its order abandoning the remaining assets of the estate to Yan and found that Yan's repeated attempts to assert unauthorized claims "were not the product of good faith mistake." Yan was given leave to amend to assert only postpetition claims, but he did not do so. Yan appealed, and the dismissal was affirmed by both the district court and the Ninth Circuit Court of Appeals. The Ninth Circuit sanctioned Yan for filing a frivolous appeal.

In 2012, Yan filed a complaint against Tony Fu, Suen, Chen, and plaintiffs, again asserting claims related to the Chenery property (the 2012 complaint). The case was removed to the bankruptcy court, which dismissed the suit. Once again, Yan was given leave to allege only postpetition claims, but he failed to do so. The bankruptcy court found Yan to be a vexatious litigant and issued a pre-filing order. The order of dismissal and the prefiling

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[2] The court did so because the trustee stipulated to abandonment and the estate had a surplus after payment of allowed claims.

order were affirmed by both the district court and the Ninth Circuit. The Ninth Circuit again sanctioned Yan for filing a frivolous appeal.

B. Plaintiffs' Complaint

In September 2014, plaintiffs filed this suit against Yan, his parents Tina Yan and Cheuk Tin Yan, and 547 Investments. In the first cause of action for malicious prosecution, plaintiffs alleged that Yan and Cheuk Tin Yan, as alter egos of one another, engaged in a pattern of filing meritless litigation against plaintiffs, including the 2010 cross-complaint and the 2012 complaint. Plaintiffs further alleged that defendants' acts were malicious and oppressive and done with conscious disregard for plaintiffs' rights, justifying an award of punitive damages.

In the second cause of action for "constructive fraud, conspire to defraud, and fraudulent transfers" against all defendants, plaintiffs alleged that Yan had a calculated plan to hide and transfer his assets and wealth, and that he and others engaged in a long-running conspiracy to defraud plaintiffs and other creditors by shifting and secreting assets among themselves. Yan allegedly used Tina Yan and/or John Nguyen, manager of 547 Investments, to effectuate a fraudulent transfer of Yan's assets and property, including but not limited to property located at 547 23rd Avenue in San Francisco (hereafter the 23rd Avenue property).

Plaintiffs further alleged that from 2011 to 2014, Yan effectuated many fraudulent transfers knowing that "his repeat[ed] malicious prosecutions against Plaintiffs would fail and final judgments adverse to them would eventually be issued." Yan allegedly transferred the 23rd Avenue property to one of his companies, 547 23rd Avenue, LLC, and then in November 2013, transferred it again to 547 Investments by a grant deed signed by Tina Yan. These transfers were allegedly made without consideration, and Yan became

insolvent shortly thereafter. Plaintiffs alleged that another creditor named Charles Li exposed this scheme and filed a complaint to set aside the fraudulent transfer of the 23rd Avenue property (hereafter the *Li* action).[3]

C. Trial and Decision

A bench trial was held in July 2019. By then, Cheuk Tin Yan was deceased. Tina Yan did not appear, and the codefendants' counsel, Mark Lapham, said she was in poor health. The court stated it would address Tina Yan's nonappearance after opening statements and initial testimony, "and then I'll think about what our remedies are." Later, the court held a colloquy with counsel regarding "the import of the missing witness and [plaintiffs'] arguments as to any preclusions or inferences I should take," as well as the purported collateral estoppel effect of the *Li* action.

Yan represented himself and testified in his defense that he filed the 2010 cross-complaint because he understood that the bankruptcy court had abandoned all prepetition causes of action back to him. He claimed he was unaware that the bankruptcy trustee had signed a general release of all known or unknown claims with Lei. He believed he had viable postpetition claims in his 2012 complaint.

Among the trial exhibits admitted into evidence was a copy of this court's unpublished opinion from an appeal of the judgment in the *Li* action. (*Li v. Chiu* (A149849, May 31, 2018) 2018 Cal.App.Unpub. Lexis 3822

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[3] In 2016, Yan filed a special motion to strike plaintiffs' operative complaint under California's anti-SLAPP statute (Code Civ. Proc., § 425.16). Our colleagues in Division Four affirmed the denial of Yan's anti-SLAPP motion as well as the order awarding attorney fees to plaintiffs as sanctions. (*Lei v. Yan* (Jan. 10, 2018, A148550) [nonpub. opn.].) Yan then moved to set aside the orders denying his anti-SLAPP motion and awarding attorney fees, and Division Four again affirmed the judgment in a memorandum opinion. (*Lei v. Yan* (Jul. 31, 2019, A155163) [nonpub. opn.].)

[nonpub. opn.] (*Li*).) There, we recounted the details of Li's UVTA claim against Yan, Tina Yan, Cheuk Tin Yan, Yan's brothers-in-law, and Yan's companies, 547 23rd Avenue LLC and 547 Investments. (*Li*, 2018 Cal.App.Unpub. Lexis 3822, at *4–5.) Li entered defaults against Yan and the two companies, and the action proceeded against Yan's family members. (*Id.* at *5–6.) The evidence established the sole function of 547 23rd Avenue, LLC was to own the 23rd Avenue property, and in July 2012, during a trial on Li's separate malpractice action against Yan, Yan transferred his ownership interest in 547 23rd Avenue, LLC to his mother and brothers-in-law. (*Id.* at *11–12.) Then, in November 2013, after 547 23rd Avenue, LLC failed to appear for an examination in connection with Li's attempt to enforce a judgment, the 23rd Avenue property was transferred to 547 Investments. (*Id.* at *12–13.) The jury returned special verdicts against all the defendants, and the trial court entered default judgments against Yan and the two LLCs and judgments against the remaining defendants consistent with the special verdicts. (*Id.* at *15–16.) We affirmed the judgment as to Yan's parents, as there was no evidence that they had given Yan reasonably equivalent value in exchange for an ownership interest in the 23rd Avenue property (*id.* at *19–22).[4]

After the conclusion of evidence in this case, plaintiffs filed a motion for contempt against Yan and attorney Lapham, claiming they had misrepresented Tina Yan's physical condition. Plaintiffs submitted evidence that Tina Yan was seen in public in July 2019 walking and carrying bags.

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[4] Plaintiffs' request for judicial notice of our opinion in *Li v. Chiu* (Dec. 22, 2020, A156760 [nonpub. opn.])—a second appeal from the *Li* judgment—is denied as unnecessary to our determination of the issues in this appeal.

On July 31, 2019, the trial court filed and served its "Tentative Statement of Decision." On the malicious prosecution claim, the court found in favor of plaintiffs. The court found that both the 2010 cross-complaint and the 2012 complaint were brought without probable cause, and that "[d]espite ample orders suggesting that his claims were meritless, Yan proceeded to bring and pursue the two actions." The court further found that these actions were initiated with malice, and that Yan's testimony that he had a good faith basis for pursuing the 2010 and 2012 actions was "not credible."

On the UVTA claim, the trial court first found that "plaintiffs have not met their burden of proving that defendants transferred Yan's real property with the intent to hinder, delay, or defraud his creditors." The court then found the doctrine of collateral estoppel did not apply based on the *Li* action because "it [was] unclear that the same parties litigated the same issues previously litigated." The court entered judgment in favor of Yan's codefendants on the second cause of action.

Finally, the trial court declined to award punitive damages to plaintiffs.

On August 2, 2019, plaintiffs filed a "Contest to Tentative Statement of Decision," challenging the trial court's finding that collateral estoppel did not apply based on the *Li* action.

Plaintiffs subsequently filed an "Amended Contest to Tentative Statement of Decision" (hereafter the amended objections) requesting that the trial court make additional findings of fact.[5] Plaintiffs also reiterated

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[5] The requested findings were as follows: (1) the bankruptcy court vacated the order abandoning assets to Yan and found that his 2010 cross-complaint was not the product of good faith mistake; (2) the bankruptcy court found that Yan's motive for pursuing frivolous litigation against plaintiffs was harassment; (3) Yan pursued 16 frivolous actions for the purpose of harassment, and Yan's filings against plaintiffs were cited by the California State Bar in recommending Yan's disbarment; (4) Lei testified that Yan

their arguments regarding the applicability of the doctrine of collateral estoppel and sought correction of the trial court's finding that they did not show Yan's malice by clear and convincing evidence. Finally, plaintiffs proposed that "[s]hould this Court choose not to apply the collateral estoppel doctrine, this Court should allow this cause of action to be dismissed without prejudice to its refiling, otherwise Plaintiffs would be deprived the opportunity to litigate and try the matter on its merits."

On August 14, 2019, the trial court filed and served its final statement of decision, which was mostly unchanged from the tentative except in three material respects. First, the court stated that it had "received and reviewed plaintiffs' objection to the tentative statement [of decision] on August 2, 2019. . . . The Court finds that plaintiffs' subsequent objections of August 12, 2019 are untimely." Second, as to the UVTA claim, the court clarified that plaintiffs had not met their burden to prove the requisite intent of the *codefendants* (whereas the tentative statement referred to "defendants"). Third, the court dismissed plaintiffs' UVTA cause of action against Yan without prejudice, stating: "To the extent that plaintiffs relied on collateral estoppel only to establish their case against Mr. Yan with regard to the UVTA cause of action, the Court grants their motion to dismiss this claim against Mr. Yan. Plaintiffs' UVTA claim against Mr. Yan is dismissed

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caused multiple lis pendens to be filed against her property; (5) the jury in the *Li* action found that Yan had engaged in a fraudulent transfer to defraud his creditors and found both Cheuk Tin Yan and Tina Yan liable to Charles Li; (6) judgment was entered in favor of Charles Li against defendants for the fraudulent transfer of the 23rd Avenue property; (7) this court affirmed the judgment in the *Li* action; and (8) Yan was found to have harassed plaintiffs within the meaning of Code of Civil Procedure section 527.6, and a restraining order was entered against him in March 2019.

without prejudice; and the Court finds that it was not litigated on the merits for the purposes of collateral estoppel on res judicata purposes."

D. Post-Trial Motions and Appeals

On August 19, 2019, Yan appealed from the judgment.[6]

On August 29, 2019, plaintiffs filed their notice of intention to move for a new trial under Code of Civil Procedure section 659 and their notice of motion and motion to set aside and vacate and amend portions of the judgment pursuant to Code of Civil Procedure section 663. In their motion to vacate, plaintiffs argued that judgment in favor of the codefendants was unfair because plaintiffs did not have the opportunity to try the UVTA claim on the merits due to Tina Yan's nonappearance. Plaintiffs asked that the UVTA claim be dismissed without prejudice against the codefendants.

In their motion for new trial, plaintiffs argued that Yan's and Lapham's misrepresentations about Tina Yan constituted irregularities in the proceedings and a fraud on the court that deprived plaintiffs of a fair trial on their UVTA claim. Plaintiffs further argued a new trial was warranted by the trial court's legal errors in finding that collateral estoppel from the *Li* action did not apply and in refusing to award punitive damages against Yan. As an alternative to a new trial, plaintiffs proposed that the court amend the statement of decision to reflect dismissal of all defendants on the UVTA claim.

The trial court issued an order denying plaintiffs' contempt motion without prejudice "for lack of jurisdiction due to a pending appeal." In the

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[6] On January 7, 2020, we dismissed Yan's appeal after he failed to submit documentation previously requested by the court to substantiate his eligibility for a fee waiver.

same order, the court denied without prejudice plaintiffs' motion for new trial and motion to vacate.

Plaintiffs timely appealed from the judgment and the order denying their post-trial motions.

DISCUSSION

A. Statement of Decision

Plaintiffs contend the trial court erred by rejecting their amended objections to the tentative statement of decision as untimely. We agree but find no prejudice.

On the trial of a question of fact by the court, the court must announce its tentative decision orally or in writing. (Cal. Rules of Court,[7] rule 3.1590(a).) As relevant here, rule 3.1590(c)(1) provides that a tentative decision may constitute the court's proposed statement of decision, subject to a party's objection within 15 days under rule 3.1590(g). Here, it appears the "Tentative Statement of Decision" was intended as a proposed statement of decision under rule 3.1590(c)(1) because the tentative decision did not specify otherwise. (Cf. rules 3.1590(c)(2) [decision indicating that a proposed statement of decision would be forthcoming]; rule 3.1590(c)(3) [decision ordering a party to prepare a statement of decision]; rule 3.1590(c)(4) [decision indicating it would become the court's statement of decision unless a party specified additional issues within 10 days].) Accordingly, plaintiffs had 15 days to file objections (rule 3.1590(g)), and their amended objections, filed on August 12, 2019—twelve days after the trial court served its tentative statement of decision—were timely.[8]

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[7] Further rule references are to the California Rules of Court.

[8] Even under the 10-day deadline of rule 3.1590(c)(4), the last day to object would have fallen on a Saturday, which extended the deadline to the

We agree with defendants, however, that plaintiffs have not demonstrated the error was prejudicial. That is, plaintiffs have not shown a reasonable probability that, absent the error, they would have obtained a more favorable result. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.)

The rule requiring findings of facts requires findings of *ultimate* facts, not evidentiary facts. (*Hayward Lumber & Inv. Co. v. Construction Products Corp.* (1952) 110 Cal.App.2d 1, 3.) Here, plaintiffs' requested findings were not ultimate facts in controversy, but probative or evidentiary facts cited in support of their legal arguments. (See *ante*, fn. 5.) Any procedural error in refusing to consider the requests for evidentiary findings was harmless.

Plaintiffs' amended objections also challenged the trial court's findings regarding collateral estoppel and punitive damages. However, it is only when a statement of decision does not resolve a controverted issue or if the statement is ambiguous, and the omission or ambiguity is brought to the court's attention, that the complaining party is entitled to avoid the application of the doctrine of implied findings. (Code Civ. Proc., § 634; *Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494.) Here, the issues of collateral estoppel and punitive damages were expressly addressed in the court's tentative statement of decision. That plaintiffs disagreed with the court's express conclusions does not mean they were prejudiced.

B. Post-Trial Motions

Plaintiffs contend the trial court erred in summarily denying their post-trial motions for a new trial and to vacate the judgment on the UVTA claim based on lack of jurisdiction. We agree in part, but again find no prejudice.

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next business day, or August 12, 2019. (Code Civ. Proc., §§ 12, 12a; rule 1.10(a).)

"As a general rule, 'the perfecting of an appeal stays [the] proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order. . . .' [¶] However, the pendency of an appeal does not divest the trial court of jurisdiction to determine ancillary or collateral matters which do not affect the judgment on appeal." (*Betz v. Pankow* (1993) 16 Cal.App.4th 931, 938.) We review the denial of a motion for new trial and a motion to vacate for abuse of discretion. (*Sandoval v. Los Angeles County Dept. of Public Social Services* (2008) 169 Cal.App.4th 1167, 1176, fn. 6; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 524.)

Although it is somewhat unclear, the trial court apparently denied plaintiffs' post-trial motions believing it lacked jurisdiction due to Yan's filing of his appeal. This is evident from the court's summary denial of the post-trial motions without prejudice in the same order that it denied plaintiffs' contempt motion without prejudice "for lack of jurisdiction due to a pending appeal."

Here, plaintiffs' motion to vacate the judgment did not attempt to demonstrate the judgment was void on its face, so the trial court properly declined to rule on it. (See *Svistunoff v. Svistunoff* (1952) 108 Cal.App.2d 638, 642 [appeal does not divest trial court of jurisdiction to vacate a judgment that is void on its face].) However, the court erred in concluding it lacked jurisdiction to consider plaintiffs' motion for new trial, as such a motion is collateral to the judgment and may proceed despite an appeal from the judgment. (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 191.) But because the new trial motion largely relitigated arguments the trial court

had already rejected, it is not reasonably probable plaintiffs would have obtained a more favorable result absent the error.

C. Collateral Estoppel

We now turn to plaintiffs' challenges to the judgment itself. Plaintiffs contend the trial court erred in refusing to give collateral estoppel effect to the judgment in the *Li* action against the codefendants. We agree.

Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*).) "Collateral estoppel applies when (1) the party against whom the plea is raised was a party . . . to the prior adjudication, (2) there was a final judgment on the merits in the prior action and (3) the issue necessarily decided in the prior adjudication is identical to the one that is sought to be relitigated." (*Roos v. Red* (2005) 130 Cal.App.4th 870, 879.) Where collateral estoppel is asserted " 'offensively' " to preclude a defendant from relitigating an issue he or she previously litigated and lost, the courts consider whether that defendant had a " 'full and fair' " opportunity to litigate the issue. (*Id.* at p. 880.) We review the application of collateral estoppel de novo. (*Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 399.)

There is no dispute that the codefendants were parties to the *Li* action, that there was a judgment on the merits, and that the *Li* action afforded the codefendants a fair and full opportunity to defend against plaintiffs' UVTA claim with regard to the 23rd Avenue property. The only element in dispute is the identity of the issues. Defendants argue the issues are not identical because the *Li* judgment already set aside the transfer of real property from

Yan to the codefendants, and hence, the codefendants no longer possessed the property for purposes of plaintiffs' UVTA claim.[9]

This argument wrongly conflates the *disposition* of the *Li* action with the *issues* in common between that action and the instant matter. "The 'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same." (*Lucido*, *supra*, 51 Cal.3d at p. 342.) The *Li* action involved the factual determination that Yan transferred the 23rd Avenue property to the codefendants to avoid his creditors. (*Li*, 2018 Cal.App.Unpub. Lexis 3822, at *12–15.) Those same factual matters—including allegations that Yan transferred the 23rd Avenue property to 547 Investments without consideration, and that this scheme was uncovered during the *Li* action—were squarely pleaded in the operative complaint in this case. It is clear that identical factual allegations were at stake in the two proceedings.

That the transfer from Yan to the codefendants was already voided by the *Li* judgment does not mean the codefendants were entitled to judgment against plaintiffs. The UVTA provides for transferee liability, subject to good faith transferee protections that the codefendants failed to satisfy in the *Li* action. (See § 3439.08.)[10] "Future creditors as well as present creditors are

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[9] When asked at trial if he had supporting authority for this contention, Lapham replied, "No, I don't, Your Honor." The same is true on appeal.

[10] Section 3439.08 provides that a transfer of property is not voidable against a person who took the property in good faith and for a reasonably equivalent value. In *Li*, we affirmed the jury's finding that Yan's parents did not provide reasonably equivalent value in exchange for an ownership interest in the 23rd Avenue property. (*Li*, 2018 Cal.App.Unpub. Lexis 3822, at *19–22.) As for 547 Investments, a default judgment was entered against the company in the *Li* action (*id.* at *15–16), and defendants do not challenge the general principle that the doctrine of collateral estoppel may be applied

protected by the legislation relating to fraudulent conveyances" (*Severance v. Knight-Counihan Co.* (1947) 29 Cal.2d 561, 567; see § 3439.04, subd. (a)(1) [transfer is voidable if made with intent to defraud "any creditor"]), and plaintiffs, as tort claimants harmed by Yan's meritless prosecutions in 2010 and 2012, were "creditors" within the meaning of the UVTA (§ 3439.01, subd. (c); *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1057). Thus, when Yan and the codefendants transferred the 23rd Avenue property in 2012 and 2013 to defraud Yan's creditors, this adversely impacted the claims of Li and plaintiffs.

Nor did the voidance of the transfer of the 23rd Avenue property preclude plaintiffs from other relief under the UVTA. Remedies under the UVTA include not only avoidance of a fraudulent transfer (§ 3439.07, subd. (a)(1)), but an attachment or other provisional remedy against the transferred asset (*id.*, subd. (a)(2)), appointment of a receiver to take charge of the transferred asset or other property of the transferee (*id.*, subd. (a)(3)(B)), and—particularly relevant here—"[a]n injunction against further disposition by the debtor or a transferee, *or both*, of the asset transferred" (*id.*, subd. (a)(3)(A), italics added). The phrase "or both" necessarily means that some form of injunctive relief remains available against both the debtor and transferee regardless of who currently holds the transferred asset, and plaintiffs here specifically requested injunctive relief as a remedy for the fraudulent transfer.

Because the codefendants were precluded from relitigating their transferee liability under the UVTA regarding the 23rd Avenue property, the judgment against plaintiffs was in error. Thus, we reverse the judgment in

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based upon a prior default judgment. (*Four Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1380.)

favor of the codefendants and remand the matter for further consideration of plaintiffs' remedies under the UVTA.[11]

D. Punitive Damages

Plaintiffs contend the trial court erred in refusing to award punitive damages. We disagree.

To justify an award of punitive damages, there must clear and convincing evidence that the defendant is guilty of oppression, fraud or malice. (§ 3294, subd. (a).) The defendant must have acted with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 922.)

We acknowledge there was abundant evidence in this case that could have supported a finding of Yan's malice and conscious disregard for plaintiffs' rights. However, the determination of whether to assess punitive damages is " 'wholly within the control of the jury' " (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 821) or, in a bench trial, the trial court. On review from that determination, we must view the evidence in a light most favorable to the judgment and resolve all conflicts in its favor. (*Mazik v. Geico General Ins. Co.* (2019) 35 Cal.App.5th 455, 462.)

Here, the trial court could reasonably have found that while plaintiffs met the preponderance threshold for proving Yan's bad faith intent in filing meritless lawsuits against them, the evidence did not meet the clear and convincing threshold for demonstrating that Yan acted with malice and

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[11] Of note, Yan testified at trial that the 23rd Avenue property "was foreclosed early this year." Plaintiffs' counsel claimed "there is an injunction with respect to that trustee sale. So that has not occurred yet." Later, plaintiffs' counsel made an offer of proof that Yan's wife was the foreclosing party and stood to receive $2 million from the sale. We leave it to the trial court on remand to determine appropriate further relief, if any, based on the status of the 23rd Avenue property.

oppression. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1005 [clear and convincing standard of proof informs appellate review].) Plaintiffs' contention that they were entitled to punitive damages as a matter of law is simply without legal support. (*Brewster v. Second Baptist Church* (1948) 32 Cal.2d 791, 800–801 [holding " 'a plaintiff is never entitled as a matter of right to exemplary damages" and even "[u]pon the clearest proof of malice," award of punitive damages "is still the exclusive province of the [factfinder]".) Accordingly, we find no reversible error in the trial court's decision not to award punitive damages.

E. Motion for Sanctions

Finally, we address plaintiffs' motion for sanctions against attorney Lapham for filing a frivolous respondent's brief on behalf of all the codefendants, including 547 Investments. Plaintiffs contend that Lapham should not have undertaken any litigation activities on behalf of 547 Investments because it is a suspended corporation that cannot prosecute or defend an action.[12]

Plaintiffs rely on rule 8.276, which authorizes reviewing courts to impose sanctions on an attorney for: "(1) Taking a frivolous appeal or appealing solely to cause delay; [¶] (2) Including in the record any matter not reasonably material to the appeal's determination; (3) Filing a frivolous

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[12] We previously granted plaintiffs' request for judicial notice that as of July 31, 2020, the California Secretary of State lists 547 Investments as a suspended corporation. Plaintiffs also move to strike the respondents' brief to the extent it was brought on behalf of 547 Investments on the ground that the company did not have the right to participate in this appeal while suspended. The motion is granted as to 547 Investments. (*Palm Valley Homeowners Assn., Inc. v. Design MTC* (2000) 85 Cal.App.4th 553, 560 [suspended corporation is "disabled from resort to the courts for any purpose"].)

motion; or (4) Committing any other unreasonable violation of these rules." (Rule 8.276(a)(1)–(4).) Here, however, 547 Investments did not appeal or file a motion, and plaintiffs identify no other rule violation committed by Lapham on 547 Investment's behalf. Nor do plaintiffs cite any authority authorizing sanctions under rule 8.276 for the filing of a respondent's brief. Indeed, there is authority to the contrary. (*CPI Builders, Inc. v. Impco Technologies, Inc.* (2001) 94 Cal.App.4th 1167, 1174 [refusing to construe former rule 26(a) as supporting sanctions for frivolous respondent's brief].)

In any event, the joint respondents' brief advanced arguments that inured to the benefit of all of the codefendants generally, not just 547 Investments. On this record, we do not find that Lapham undertook appellate activities on behalf of 547 Investments "solely to cause delay" (rule 8.276(a)(1)) or that the respondent's brief was "totally and completely without merit" (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650). Accordingly, plaintiffs' motion for sanctions against Lapham is denied.

DISPOSITION

The judgment in favor of Tina Yan, Cheuk Tin Yan, and 547 Investments, LLC, is reversed, and the matter is remanded for further proceedings consistent with this opinion. In all other respects, the judgment is affirmed. Plaintiffs' motion for sanctions against attorney Mark Lapham is denied. Plaintiffs are entitled to recover their costs on appeal.

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Fujisaki, Acting P.J.

WE CONCUR:

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Petrou, J.

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Jackson, J.

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